

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cr. No. 18-3495 JCH
)	
)	
DOUGLAS D. SMITH,)	
)	
Defendant.)	

UNITED STATES' REPLY TO DEFENDANT'S RESPONSE TO THE
UNITED STATES' MOTION *IN LIMINE* TO ADMIT USE
OF DEMONSTRATIVE EXHIBIT DURING TRIAL (DOC. 103)

The United States hereby replies to Defendant's Response to the United States' Motion *in Limine* to Admit Use of Demonstrative Exhibit during Trial (Doc.73).

Defendant's assertion the demonstrative aid model is not to scale appears to be primarily based on the size of a vehicle in a carport, the white color of the ground, and the lack of objects and vegetation in the yard. As explained in its motion, the United States is prepared to authenticate the 3D model through FBI personnel, including the builder of the model from the FBI's Operational Projects Unit. The 3D model is based on sketches, total station data, scanner data, photographs, including spherical photographs that depict the exterior of Defendant's home. The United States has disclosed this associated data to Defendant as Bates 791-1445. Defendant broadly argues the model will not be helpful to the jury, but does not specifically challenge the 3D model based on the total station data, scanner data, photographs or sketches disclosed.

Clearly, a 3D model will provide proximity of larger structures associated with Defendant's property. In addition to the model, photographs can be used to show the state of Defendant's property. In explaining his actions to law enforcement officers, Defendant drew

diagrams of his property. He included the proximity of structures and buildings. Undoubtedly, it would assist the jury to have a 3D model to show proximity of the structures and to provide context for the photographs. Although defense argues the model is cumulative, it is not. The photographs attached to Defendant's response show the need for greater context and proximity.

On response, Defendant cannot show abuse that prejudices him. Defendant has been provided with the underlying data used to generate the 3D model. The United States will reschedule inspection of the 3D model. Again, the United States will additionally authenticate the 3D model through FBI personnel. Furthermore, the United States is agreeable to removing the offending vehicle and carport, which were placed on the model for proximity purposes. Once again, Defendant can show photographs to the jury to show the condition of the objects in the yard and the true color of the ground. Finally, the United States requests Tenth Circuit Pattern Instruction No. 1.41 be read to the jury to explain that the 3D model is not evidence, but that it serves to help explain the evidence and it is intended to be used to assist the jury.

CONCLUSION

For the reasons set forth above, the United States respectfully requests this Court allow the above-described evidence to be presented at trial.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney

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NOVALINE D. WILSON
KYLE T. NAYBACK
Assistant United States Attorneys
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 224-1419

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will cause a copy of this filing to be sent to counsel for Defendant.

/s/

NOVALINE D. WILSON

Assistant United States Attorney